

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

UNITED STATES OF AMERICA *et al.*,

Plaintiffs,

V.

COMMONWEALTH OF MASSACHUSETTS

et al.,

Defendants.

Civil Action No. 05-10112-RCL

Next Event: Motion Hearing before
Magistrate Judge Leo T. Sorokin,
December 20, 2007 at 1:45 p.m.

**COMMONWEALTH'S SUPPLEMENTAL MEMORANDUM IN OPPOSITION TO
COAST GUARD'S MOTION FOR PRELIMINARY AND PERMANENT INJUNCTION**

At the October 15, 2007 status conference, the Court (Lindsay, J.) directed the Coast Guard to respond to certain discrete document requests of the Commonwealth on an “expedited basis,” and it further stated that “as [the Coast Guard] gives [the Commonwealth] some documents, if there are things [the Commonwealth] want[s] to supplement [with respect to briefing on the injunction], then [the Commonwealth] can file supplements to that.” Ex. 1, Transcript of Status Conference (“Tr. Hr’g”), at 28, lines 17-19 (Oct. 15, 2007). Pursuant to the permission previously provided by the Court, Defendant Commonwealth of Massachusetts (“Commonwealth”)¹ files this supplemental opposition, based on the Coast Guard’s response to date to the discrete document requests.

At the October 15, 2007 status conference, the Court struck a balance between the parties' competing requests for how this case should proceed on remand from the First Circuit by

¹ For ease of exposition, references to the “Commonwealth” in this Supplemental Opposition also include the additional defendants Governor of Massachusetts, Massachusetts Department of Environmental Protection, and Commissioner of the Massachusetts Department of Environmental Protection.

(1) setting a schedule for filing dispositive motions but (2) requiring the United States to respond to the Commonwealth's limited document requests on an "*expedited basis*." *Id.* at 31, lines 1, 7-9 (emphasis added); *see also id.* at 29, lines 14-16. The Coast Guard has upset this balance by failing to provide a meaningful response to the Commonwealth's limited requests. The Coast Guard's contravention of this Court's directive provides yet another reason—in addition to the numerous ones set forth in the Commonwealth's opposition ("Commw.'s Opp.") (Dkt. No. 96)—for denying the Coast Guard's Motion for Preliminary and Permanent Injunction (Dkt. No. 91).²

BACKGROUND

The Commonwealth here provides some additional background relevant to this supplemental memorandum. On October 15, 2007, the parties met before the Court to decide how this case should proceed on remand from the First Circuit. *United States v. Massachusetts*, 493 F.3d 1 (1st Cir. 2007). At the hearing, the Coast Guard argued that the Massachusetts tugboat escort and manning requirements, Mass. G.L. c. 21M, § 4 (manning requirement), § 6 (escort requirement), are preempted as a matter of law by Title I of the Ports and Waterways Act, 33 U.S.C. §§ 1221-1236, and the Coast Guard's preemption statement in the Final Rule for Buzzards Bay. Tr. Hr'g at 5, lines 10-14. Accordingly, the Coast Guard stated that it was prepared to file a motion for relief. *Id.* at 23. In turn, the Commonwealth asked the Court for a four month period to conduct discovery on several discrete issues. *Id.* at 5-6. The Court balanced these competing requests by setting a schedule for filing motions but also permitting the Commonwealth to serve a limited request for documents seeking prior Coast Guard statements and decisions to preempt state or local laws, focused primarily on the West Coast.

² The only use that the Commonwealth currently makes of the Coast Guard's inadequate discovery response is as a further ground for denying the preliminary and permanent injunction motion. If the Court denies that motion, then the Commonwealth will attempt to resolve the discovery dispute pursuant to Fed. R. Civ. P. 37 and Local Rule 37.1.

The Court instructed the Coast Guard to respond to the Commonwealth's requests "on an expedited basis." *Id.* at 31, line 1.

On October 17, 2007, two days after the status conference, the Commonwealth served its document requests on the Coast Guard by electronic and first class mail.³ The eleven specific requests sought, *inter alia*, all documents concerning (1) the Coast Guard rulemaking regarding Buzzards Bay that culminated in the final rule published at 72 Fed. Reg. 50,052 (Aug. 30, 2007) and is the primary basis for the Coast Guard's motion for a preliminary and permanent injunction, (2) the Coast Guard rulemakings regarding Puget Sound that culminated in the final rules published at 47 Fed. Reg. 17,968 (Apr. 26, 1982) and 59 Fed. Reg. 42,962 (Aug. 19, 1994), (3) California's local tug escort rules, (4) local tug escort rules in water bodies other than Buzzards Bay, Puget Sound, and 5 specified California water bodies, and (5) all decisions by the Coast Guard either to preempt or not to preempt state or local laws and regulations regarding local tug escorts. Commw.'s 1st Req. for Docs. at 4-6 (Reqs. 1-11).

On November 19, 2007, the Coast Guard produced fifteen documents. Thirteen of the documents were produced in response to request number 10,⁴ and two of the documents were produced in response to request number 11.⁵ Only ten of the fifteen documents were authored by

³ The Commonwealth's First Request for Production of Documents to the United States ("Commw.'s 1st Req. for Docs.") appears in the record as Exhibit A to the Memorandum of the Coalition for Buzzards Bay in Opposition to the United States' Motion for Preliminary and Permanent Injunction (Dkt. No. 94).

⁴ Request No. 10: "All documents concerning any statement or decision by the Coast Guard that it intends to preempt any state, county, or municipal law under Title I, other than the Massachusetts laws at issue in this litigation." Commw.'s 1st Req. for Docs. at 6.

⁵ Request No. 11: "All documents concerning any statement or decision by the Coast Guard *not* to preempt a state, country, or municipal law under Title I, other than its statements regarding the local tug escort rule for Puget Sound that appear at 44 Fed. Reg. at 21,978; 47 Fed. Reg. at 17,971; 57 Fed. Reg. at 30,064; and 59 Fed. Reg. at 42,968." Commw.'s 1st Req. for Docs. at 6.

the Coast Guard.⁶ On November 30, 2007, the Coast Guard provided its formal response to the Commonwealth's document requests. Ex. 2 (Pl.'s Responses and Objections to Defs.' First Requests for Production of Documents ("Pl.'s Resp. to Defs.' Disc.")). In this response, the Coast Guard did not provide any additional documents but instead stated a number of broad objections, including several already implicitly rejected by this Court, and attached a "document index." *Id.* The document index states that the Coast Guard did not discover any responsive documents in 6 of its 9 districts, that it found only privileged documents in one other district,⁷ and that it had not completed its search for documents in either District 1, which includes Massachusetts, or the Coast Guard's Office of Regulations and Administrative Law ("G-LRA"). *See id.* at 2-4.

Earlier today (December 18) the Coast Guard notified the Commonwealth by electronic mail that it was sending by Federal Express (for arrival tomorrow, December 19) a disc with documents responsive to the Commonwealth's document request number 1, and it attached an index of the documents on the disc, which concern the Buzzards Bay rulemaking. Ex. 3, Pl.'s Suppl. Resp. to Defs.' Req. No. 1. This document request had sought all documents concerning the rulemaking regarding Buzzards Bay that culminated in the final rule memorialized at 72 Fed. Reg. 50,052. Commw.'s Disc. Req. at 4 (Req. 1). Notably, the Coast Guard has still not provided any documents regarding its prior rulemakings in *Puget Sound*. *See* Tr. Hr'g at 25,

⁶ The Coast Guard produced, according to its own count, approximately 175 pages of paper, 122 pages of which were the result of five documents authored by Washington State.

⁷ The Coast Guard noted only that the search for documents in District 11, which covers California's waters, found "Privileged Documents Only." This bare assertion fails to satisfy the requirements of Local Rule 34.1(E) or the Commonwealth's specific request for a "privilege log describing (a) the kind of document withheld . . . , (b) its date, (c) the author and all recipients, (d) a brief statement of the document's subject matter, and (e) the grounds or reasons asserted for withholding the document." Commw.'s 1st Req. for Docs. at 2-3.

lines 13-17 (Court stating, “I will permit [the Commonwealth] . . . to do whatever discovery you think is appropriate, and if it’s necessary to supplement whatever papers you have filed with whatever you discover with respect to Puget Sound.”). The Coast Guard’s failure to provide any documents in regard to the Puget Sound rulemakings is especially problematic because the documents the Commonwealth has been able to obtain on its own on these rulemakings reveal that the Coast Guard’s prior position regarding the preemption of local escort rules, among other issues, is inconsistent with its present litigation position.

Instead of providing reasonable responses to the Commonwealth’s document requests, as the Court had contemplated, *see* Tr. Hr’g at 27-29, 31 line 1, the Coast Guard asserted objections to them, which are premised on its oft-repeated argument that discovery is unnecessary because the questions before the Court are solely ones of law. *See* Tr. Hr’g at 10; *see also* Ex. 2, at 2 ¶¶ 4, 5 (Pl.’s Resp. to Defs.’ Disc.) (“The United States’ claims present pure questions of law that need no further factual development beyond the ‘Final Rule [for Buzzards Bay],’ 72 Fed. Reg. 50052 (Aug. 30, 2007).”). Yet, at the status conference the Court had clearly directed the Coast Guard to produce documents on precisely these topics, and on an *expedited* basis. Tr. Hr’g at 28, *see also id.* at 31, line 1.

The Commonwealth has waited patiently up to this date to give the Coast Guard every possible opportunity to comply with the Court’s directive to produce documents in response to the discrete requests propounded by the Commonwealth. The Coast Guard having failed to comply with this directive in a meaningful way (in particular, with respect to its prior actions on the West Coast), the Commonwealth now supplements its prior opposition, as the Court authorized it to do, to assert an additional reason for denying the Coast Guard’s requested relief. Tr. Hr’g at 28, lines 17-19, *see also id.* at 25, lines 13-17.

ARGUMENT

It is well settled that the District Courts have broad discretion to “make determinations regarding the propriety of injunctive relief.” *K-Mart Corp. v. Oriental Plaza*, 875 F.2d 907, 915 (1st Cir. 1989) (quoting *Wagner v. Taylor*, 836 F.2d 566, 575-76 (D.C. Cir. 1987)). Moreover, the District Courts have broad discretion to enforce case management orders, *Tower Ventures, Inc. v. City of Westfield*, 296 F.3d 43, 45-46 (1st Cir. 2002), and to determine appropriate sanctions for a party’s failure to comply with discovery orders and the federal rules for discovery. *See Pena-Crespo v. Puerto Rico*, 408 F.3d 10, 13 (1st Cir. 2005). These sanctions include dismissal of an entire action, *Damiani v. Rhode Island Hospital*, 704 F.2d 12, 17 (1st Cir. 1983), and, by necessary implication, denial of an interlocutory request for preliminary and permanent relief. The Court should exercise its discretion here to deny the Coast Guard’s request for a preliminary and permanent injunction.

In this case, the Court allowed the Commonwealth to serve a limited request for documents seeking prior Coast Guard statements and decisions to preempt state or local laws. Tr. Hr’g at 27-31. These requests were aimed primarily at statements and decisions the Coast Guard made on the West Coast to preempt or not to preempt state and local escort requirements in the non-litigation context. *Id.* at 15-17 (explaining relevance of pre-litigation Coast Guard writings and statements); *see also Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 213 (1988) (“Deference to what appears to be nothing more than an agency’s convenient litigating position would be entirely inappropriate.”). Yet, the Coast Guard has failed to provide a meaningful response to the Commonwealth’s request—a request that was designed to assist this Court in its resolution of the issues before it and to assist the Commonwealth in its defense of the state laws at issue. Despite this Court’s directive and the now-settled relevance of the Coast Guard’s prior

decisions, the Coast Guard objected to the Commonwealth's requests, again asserting that the Coast Guard's preemption determination regarding Buzzards Bay is "not impacted by any action the Coast Guard may or may not have taken elsewhere years or decades earlier, so any discovery requests relating to [] such actions is irrelevant." Ex. 2, at 2 ¶ 5; *contra, e.g.*, Commw.'s Opp., p. 16 (an unexplained departure from a prior agency position is a basis for finding that the new position is arbitrary and capricious). The Court already has rejected this assertion, and the Coast Guard's attempt to hide behind it is wholly unsupported.

The Coast Guard's failure to provide a meaningful response is particularly problematic here because the documents the Commonwealth has discovered on its own reveal that the agency's current position conflicts with its earlier preemption decisions regarding at least Puget Sound. Commw.'s Opp. pp. 7-9, 15-17. As explained in the Commonwealth's opposition at pages 16-17, in 1982 and 1992, under circumstances very similar to the ones present here, the Coast Guard first decided not to issue new regulations for local escorts because the rule would have been "essentially equivalent of existing [Washington] State law," 47 Fed. Reg. 17,968, 17,971 (Apr. 26, 1982), and later decided that it did not intend a federal escort rule for certain vessels transiting Puget Sound to preempt a state escort rule because there did "not appear to be any substantial conflict." 57 Fed. Reg. 30,058, 30,064 (Jul. 7, 1992). In its discovery request, the Commonwealth asked for any documents concerning these two rulemakings. Commw.'s 1st Req. for Docs., at 4-5 (Reqs. 2 & 3). The Coast Guard has yet to respond to these requests. Ex. 2, at 4-5. The Coast Guard's failure to provide a meaningful response to these and other specific requests creates an inference that the documents not yet produced further undermine the Coast Guard's current litigation position and therefore also further undercuts its likelihood of success on the merits.

The Coast Guard's current apparent opposition to discovery is unfortunately consistent with the manner in which it approached this case the first time around. In the first round of this litigation, the Coast Guard moved for judgment on the pleadings prior to any opportunity for discovery. The Commonwealth and Intervenor-Defendant Coalition for Buzzards Bay opposed those motions, arguing that factual development was appropriate. On July 24, 2006, the Court ultimately proceeded to allow the motions and to declare that each of the challenged state law provisions was preempted and invalid. *United States v. Massachusetts*, 440 F. Supp. 2d 24, 48 (D. Mass. 2006). The First Circuit later reversed that decision based, in part, on the need for further factual development. *See U.S. v. Mass.*, 493 F.3d at 19. By failing to produce all of the requested documents, the Coast Guard again asks this Court to walk down that same mistaken path. While the Commonwealth and the Coalition have provided the Court with numerous well supported reasons to deny the Coast Guard's requested relief, including the fact that prior Coast Guard decisions regarding the West Coast answer the question before the Court in the Commonwealth's favor, the Coast Guard's failure to comply with the Court's prior directive on discovery provides further grounds for denial.

CONCLUSION

For the foregoing reasons and the reasons set forth in the Commonwealth's Opposition (Dkt. No. 96), the Commonwealth respectfully requests that the Court deny Plaintiffs' Motion For Preliminary and Permanent Injunction.

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Respectfully Submitted,

COMMONWEALTH OF MASSACHUSETTS
et al.

By their attorneys,

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ATTORNEY GENERAL

/s/ Seth Schofield

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Dated: December 18, 2007

CERTIFICATE OF SERVICE

I, Seth Schofield, certify that the foregoing *Commonwealth's Supplemental Memorandum in Opposition to Coast Guard's Motion for Preliminary and Permanent Injunction* and the three Exhibits attached thereto (Exs. 1-3), which was filed through the ECF system, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non registered participants on December 18, 2007.

/s/ Seth Schofield

Seth Schofield

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

THE UNITED STATES OF AMERICA,
Plaintiff, Civil Action No. 05-10112-RCL

V. October 15, 2007, 3:30 p.m.

THE COMMONWEALTH OF
MASSACHUSETTS, et al.,
Defendants.

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE REGINALD C. LINDSAY

UNITED STATES DISTRICT COURT
JOHN J. MOAKLEY U.S. COURTHOUSE
1 COURTHOUSE WAY
BOSTON, MA 02210

DEBRA M. JOYCE, RMR, CRR
Official Court Reporter
John J. Moakley U.S. Courthouse
1 Courthouse Way, Room 5204
Boston, MA 02210
617-737-4410

**Mass. Suppl. Opp.
Exhibit 1**

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P R O C E E D I N G S

(The following proceedings were held in open court before the Honorable Reginald C. Lindsay, United States District Judge, United States District Court, District of Massachusetts, at the John J. Moakley United States Courthouse, 1 Courthouse Way, Boston, Massachusetts, on October 15, 2007.)

THE CLERK: Civil Action 05-10112 United States v. Commonwealth of Mass.

Counsel, please state your name for the record.

(Discussion off the record.)

THE COURT: All right. Give your appearances, please.

MR. BRESSLER: Steven Bressler with the U.S. Department of Justice civil division on behalf of plaintiff, United States.

THE COURT: Okay.

MR. BENNER: Captain Frederick Kenney, United States Coast Guard on behalf of the United States.

THE COURT: Captain, what's your last name?

MR. BENNER: Kenney.

MR. HACKEY: Andrew Hachey, Nixon Peabody on behalf of intervenor plaintiffs. With me is Jonathan Benner from Troutman Sanders.

MR. CRAY: Pierce Cray, Assistant Attorney General from the Commonwealth. Also with me is Seth Schofield, also an

1 Assistant Attorney General.

2 MR. ETTINGER: Good afternoon, your Honor. Jonathan
3 Ettinger from Foley Hoag from the Coalition For Buzzards Bay.
4 And with me is Elizabeth DeLisle, also from Foley Hoag.

5 THE COURT: Okay. I am happy to hear this case.
6 So I'm here to listen to you on how we should proceed on this
7 remand.

8 Anybody have any thoughts? Is there going to be a
9 new effort and new motions, or shall we just work on a schedule
10 and bring this case to a conclusion?

11 MR. BRESSLER: Your Honor, we discussed this in the
12 hall beforehand, there may be some disagreement. Again, Steven
13 Bressler with the U.S.

14 The 1st Circuit ruled in June. At the end of
15 August there was what we think a very significant development.
16 The Coast Guard published a final rule that will take effect
17 November 28th that we believe is dispositive of two of the
18 three provisions that are at issue here. I have two copies for
19 the Court if I may give it to your clerk.

20 THE COURT: Okay.

21 MR. BRESSLER: And I flagged the Coast Guard's
22 preemption statement which the 1st Circuit noted had not been
23 sufficiently clear in some previous rules that discussed the
24 Massachusetts act that's at issue here.

25 The 1st Circuit faulted Judge Tauro for entering

1 judgment on the pleadings without taking evidence because it
2 found that there needed to be an overlap analysis to determine
3 whether these laws would be considered under the field
4 preemptive regime of Title II of the Ports and Waterways Safety
5 Act or conflict preemption under Title I.

6 The 1st Circuit also noted that the United States
7 had not sufficiently developed an argument that these
8 provisions were preempted under Title I regardless.

9 We're prepared to move forward to say as a matter
10 of law they are preempted under Title I. There is no need to
11 figure out whether the broader provision of Title II applies
12 because Title I takes care of it. And we think that certainly
13 when this rule takes effect on November 28th, the state law
14 should be enjoined.

15 THE COURT: And so between now and November 28th
16 what should I do?

17 MR. BRESSLER: Well, your Honor, now that we
18 understand that the state clearly disagrees with us about the
19 effect of the rule, we would be prepared to move in I think
20 about two weeks for summary judgment and/or preliminary
21 injunction. They can respond and your Honor could rule.

22 THE COURT: Yes, sir.

23 MR. CRAY: Yes, your Honor. We do disagree that
24 the new regulation, if and when it takes effect, would dispose
25 of the case. We would be willing, the area of overlap analysis

1 that Mr. Bressler referred to and the 1st Circuit said on
2 remand was something that needed to be gotten into, we would be
3 willing to defer discovery on that until the Court has had an
4 opportunity to rule on the effect of the new regulation. That
5 would be by far the most extensive area of discovery, and
6 again, we're willing to put that over so that these arguments
7 can be made.

8 What we would like, though, your Honor, is a brief,
9 focused period of four months' discovery into two issues that
10 happen before any dispositive motion is filed. Of course they
11 can move for a PI at any point, that's their determination.
12 But in terms of scheduling a dispositive motion, we would like
13 discovery, a four-month period of discovery, on two limited
14 areas. First would be discovery related to the third of the
15 three claims. As Mr. Bressler correctly stated, the new
16 regulation only resolves, even if his view is correct, two of
17 the three claims. The 1st Circuit was very clear that on the
18 third claim that factual development needed to occur. And
19 given the case is already January '05 case, that should move
20 ahead.

21 We would also like discovery on the -- a brief
22 period of discovery also going to the legal effect of the new
23 regulation that Mr. Bressler handed up to you. Here's why
24 discovery --

25 THE COURT: I missed that. You want discovery on

1 the legal effect --

2 MR. CRAY: On whether or not it is as dispositive
3 as he says. Here's why some discovery would be appropriate.
4 The 1st Circuit in its decision made clear that it's not enough
5 for the Coast Guard simply to say we intend to preempt. They
6 also indicated that this needs to be consistent with that
7 expression -- that statement by the Coast Guard needs to be
8 consistent with Congressional intent. And one of the arguments
9 we're going to be making as to why it is actually inconsistent
10 with Congressional intent is how the same agency has acted
11 previously on precisely the same type of regulation.

12 In the state of Washington, in Puget Sound,
13 there -- there is currently in effect the exact same kind of
14 regulation that they're seeking to supersede now. In the
15 proceedings at that point, they said in the Federal Register
16 that they did not view it was conflicting with federal law and
17 were not intending that it be preemptive.

18 The same basic thing here. It's a regulation that
19 would require tug escorts for effectively all vessels. A state
20 regulation in Washington it was deemed to be okay, here's it's
21 not.

22 Apparently on the west coast there are other areas
23 where these types of regulations -- I can't necessarily
24 represent that they are as similar -- but have been allowed by
25 the Coast Guard to stand in San Francisco Bay, Los Angeles

1 Harbor, and San Diego Harbor. Our argument is one of the
2 clearest indicia of what Congress intended is how the agency
3 previously had been applying that Congressional mandate.

4 THE COURT: Why do you need discovery on that?

5 MR. CRAY: We want it just to be able to develop
6 what the agency, in fact, did. There is some stuff certainly,
7 your Honor, that is judicially noticeable, we obviously will be
8 citing that, but we want to make sure at least in the Coast
9 Guard -- where the Coast Guard is allowing things to stand and
10 contrast that with how they've approached the east coast. Our
11 argument is how they acted on the west coast is illustrative of
12 Congressional intent and by the same token their contrary
13 position now is inconsistent with that Congressional intent.

14 So our view is we're simply just asking for four
15 months, both this and on the topic that clearly needs to
16 proceed, the third of the three claims that Mr. Bressler makes
17 no argument the new regulation addresses. If we do that, then
18 there can be a brief period of dispositive motions, and if your
19 Honor were to agree with Mr. Bressler, the entire case would be
20 resolved.

21 If you were not to -- if your Honor were not to,
22 then we would get into the much more extensive area of
23 discovery down the road.

24 So we propose it's a reasonable effort. We're not
25 trying to ask for all of the discovery now. We're just saying

1 it would be a limited focus. It would perhaps provide the
2 opportunity to have the entire case to be resolved one way or
3 another.

4 I think the most important point, though, all this
5 is, we've already been down the trail before in this case of no
6 discovery, no fact development, just moved straight to
7 dispositive motions, and the 1st Circuit has already said once
8 that was inappropriate. All we're asking for is a brief period
9 of discovery so that the same mistake wouldn't potentially
10 happen again.

11 THE COURT: Yes, sir.

12 MR. BRESSLER: Your Honor, the 1st Circuit said
13 that was inappropriate because they believed that -- and I'll
14 say, of course, the U.S. would take exception to what the 1st
15 Circuit did, but obviously your Honor cannot -- that there
16 should be an overlap analysis with factual development, whether
17 it's under a Title II analysis or a Title I analysis.

18 We're not arguing the broader Title II analysis;
19 we're arguing Title I. So as Mr. Cray said, he has no problem
20 proceeding with that without factual development, and that is
21 what I'm suggesting we do.

22 I would suggest that the things he's talking about
23 taking discovery on might be subject to production of an
24 administrative record, but I don't see how there could be
25 discovery on what the agency did, how that would not be

1 judicially noticeable. In any event, the way he stated the law
2 is different from what the 1st Circuit said. What the 1st
3 Circuit said was the agency's preemption judgment is
4 dispositive on the question of implicit intent to preempt
5 unless the agency's position is inconsistent with clearly
6 expressed --

7 THE COURT: Slowly.

8 MR. BRESSLER: I apologize. -- unless the agency's
9 position is inconsistent with clearly expressed Congressional
10 intent or subsequent developments, meaning subsequent to what I
11 handed the Court, reveal a change in that position.

12 So the question of whether Congress clearly
13 expressed its intent in a manner inconsistent with what the
14 Coast Guard did on August 30th has nothing to do with what the
15 Coast Guard did sometime ago in Puget Sound.

16 As for the financial assurance requirement, the
17 reason that we're not pressing forward with that at this time,
18 again, turning to the 1st Circuit's opinion, I think the last
19 page of it, what the 1st Circuit said was the state has not
20 structured its exception scheme. There's no operational scheme
21 to enjoin. The state should make such a showing on remand,
22 meaning the state should tell us what its operational scheme is
23 and then the district court can move forward.

24 They haven't done that. My understanding is
25 they're talking about coming out with rules in the spring. We

1 don't plan to press forward with a preliminary injunction or
2 anything else until we see what they're going to do, and we're
3 hopeful that the state will work with the Coast Guard and the
4 federal government so that we can avoid that conflict as the
5 1st Circuit encouraged us to do.

6 So I don't think we need discovery -- there may be
7 no claim depending on how they proceed, at least we may not
8 press our claim on that.

9 MR. CRAY: Your Honor, just on the last point about
10 the potential state regulation on this third of the three
11 claims. The current legal claims in this case are not
12 challenging any regulation; they challenge the statute on its
13 face and all possible applications. Our view is that claim
14 should not -- the statute should not rise or fall on whatever
15 regulation might end up coming out.

16 If ultimately they persuade that you the regulation
17 is inappropriate, the obvious remedy would be to strike the
18 regulation, not to strike the statute. The facial challenge
19 for the statute proceed requires that there be no procedural
20 application under any type of regulation.

21 That's the claim that's currently in the complaint,
22 and that's what needs to be addressed.

23 If and when there is a regulation, they're
24 certainly free to amend here or file a new complaint, but it
25 should be focused on the regulation. The United States

1 government currently has a pending challenge against a dually
2 enacted state statute. That shouldn't be diverged, either go
3 up or down. We would like to be able to move forward with
4 discovery on that.

5 To date we have gotten -- the initial disclosures
6 from the United States government was a two-page thing with a
7 single sentence on each statement basically saying there's
8 absolutely nothing.

9 The 1st Circuit clearly indicated that factual
10 development is necessary. We would like in the least to get
11 some --

12 THE COURT: I don't understand the concept that
13 you're posing that the factual development is necessary for the
14 determination of whether the regulation is consistent with
15 Congressional intent.

16 MR. CRAY: I'm sorry, that's a separate claim.
17 What Mr. Bressler was addressing at the end --

18 THE COURT: I'm going back to that claim because I
19 missed it the first time.

20 MR. CRAY: Okay, sir.

21 THE COURT: I heard what you said, but I don't -- I
22 don't see the necessity of discovery with respect to that
23 question.

24 I know what you said. You said in Puget Sound they
25 did one thing, here they do another thing. So the question for

1 me would be whether they're doing it right here, not whether
2 they did it right or wrong in Puget Sound, isn't it?

3 MR. CRAY: No, your Honor. I would submit, your
4 Honor, how they previously interpreted the statute is very good
5 indication -- because that was closer to the time of
6 enactment -- is very good indication of what the -- of what
7 Congress' intent at the time was.

8 THE COURT: Well, it is good intention of what they
9 thought -- that they thought was -- that's the most that you
10 can get out of that. But they've since changed their mind, or
11 at least it appears --

12 MR. CRAY: On one coast and not the other. And the
13 whole idea can you have east coast preemption and west coast
14 preemption --

15 THE COURT: But the point of the matter is, I'm not
16 so sure -- whatever facts you find doesn't change whether it's
17 consistent or not consistent with Congressional intent. Does
18 it? It just gives me some indication that they may have had a
19 different view out there about what Congress intended here.

20 MR. CRAY: They consistently argued in the past
21 that heavy deference should be given to construction --

22 THE COURT: Indeed, that is the law.

23 MR. CRAY: Except where they're being
24 inconsistent. And also, I think to the extent deference is
25 given, you should look first to how they initially interpreted

1 matters --

2 THE COURT: But let's suppose I needed to do that.
3 What is it that you're going to discover that's going to tell
4 me what they did? I mean, you want to know why they did it,
5 and that's what you're going to find out -- excuse me.

6 MR. CRAY: I'm sorry.

7 THE COURT: What they did is, you know, is on paper
8 somewhere, isn't it?

9 MR. CRAY: It is to at least in one respect that we
10 have found, specifically if -- and there's, we feel, statements
11 that's very useful in what's on record.

12 THE COURT: What's very useful?

13 MR. CRAY: The statement what they said at the time
14 they were putting a federal regulation out on the same subject
15 in Puget Sound, they said a largely similar state regulation we
16 have here was not going to conflict with federal law and then
17 they were not intending to preempt it. That is highly -- and
18 to the extent to which there are other statements they made --
19 this is what was in the Federal Register, what I just referred
20 to, your Honor. If there are other statements that's made in
21 another subregulatory context or other context, that simply is
22 useful evidence of how they construed it.

23 THE COURT: Well, if they made it in the Federal
24 Register, why isn't that enough?

25 MR. CRAY: I mean, we like what they said there.

1 There may be something better that's legitimately discoverable
2 elsewhere. The idea is let's just do a brief period, let's
3 find out --

4 THE COURT: I understand what the idea is. I'm
5 just trying to figure out why it's necessary to do it when the
6 issue is one of law.

7 Yes, sir, you were going to say something?

8 MR. ETTINGER: Thank you, your Honor. Jonathan
9 Ettinger, for the record.

10 Your Honor, what we're looking for is some very
11 limited discovery --

12 THE COURT: I know.

13 MR. ETTINGER: -- and I'll tell you specifically
14 what we would like to get and why. On what similar situations
15 the Coast Guard has faced under this statutory regime where
16 they have promulgated regulations and interpreted Congressional
17 intent. We found one in the Federal Register, we don't know
18 what else they've done, particularly in the west coast. They
19 know that. That's quite simple, it's not extensive discovery
20 to find that out.

21 The reason why it's important is the 1st Circuit
22 has said in many contexts when you want to defer to an agency's
23 interpretation of a statute, you look at what they have done
24 when they are not in litigation. And that what they say or do
25 while they are in litigation is entitled to significantly less

1 deference.

2 What I'm suggesting is that what we found out so
3 far for what's happened on the west coast belies what they're
4 doing here. There is a statement here in the Federal Register
5 that they intend -- it continues to preempt the regulations
6 relating to Buzzards Bay and the reason is for national
7 uniformity. I don't want to take them out of context, I
8 believe that's what it said in the Federal Register, and I
9 could be wrong. My recollection is they said national
10 uniformity.

11 We now have found at least one situation, perhaps
12 more, on the west coast where that was not the case. It
13 suggests to me, your Honor, that if we spent a little bit of
14 time probing that it might help the Court make the decision as
15 to what it is or is not of the Coast Guard's interpretation of
16 the Congressional intent, which is entitled to deference.

17 THE COURT: Well, help me out. Your position that
18 if all of the prelitigation writings or statements of the Coast
19 Guard are one way and that way is your way, the way you think
20 Congressional intent suggests or is --

21 MR. ETTINGER: Yes.

22 THE COURT: That there's no deference due to the
23 interpretation of a statute in this case?

24 MR. ETTINGER: That's correct. And the portion
25 that Mr. Bressler read to you from the 1st Circuit -- I don't

1 have the page citation because I'm looking --

2 THE COURT: It's a long opinion so it's got -- I'm
3 sure it's like a Bible, you can find anything in there to help
4 you out.

5 MR. ETTINGER: That's probably true. And whether
6 this is Luke 23 or not or what citation it is I can't tell
7 you. But at least with respect to the package from the 1st
8 Circuit, it did go on to say that nonetheless judicial review
9 of that judgement would still be available, citing to a Supreme
10 Court case particularly on this issue.

11 It is going to fall into your Honor's lap at some
12 point in this case whether what the Coast Guard did is
13 consistent with the Congressional directive or not, and we're
14 trying to give you enough information to help you make that
15 decision.

16 THE COURT: All right. So, Mr. Bressler, what's
17 wrong with four months?

18 MR. BRESSLER: Your Honor, this rule is going to
19 take -- has been published, it's been on the books now for
20 about six weeks, and another six weeks it will take effect.

21 THE COURT: So what that means is that -- so two
22 and a half months from now it will take effect -- or is that a
23 month and a half?

24 MR. BRESSLER: I believe at the end of November,
25 November 28th it takes effect.

1 THE COURT: So it's a month and a half.

2 MR. BRESSLER: Month and a half. And
3 operationally, Mr. Benner, who represents the actual shipping
4 organizations, may be in a better position to explain the harm
5 that that will cause to people who are actually piloting boats
6 through Buzzards Bay and through the water here, the confusion
7 there I don't think is in anyone's interest to have competing
8 regulatory schemes in place without a ruling on which one
9 prevails.

10 THE COURT: Well, that assumes I get to a ruling by
11 the end of November either way.

12 MR. BRESSLER: Yes.

13 THE COURT: Yes.

14 MR. BRESSLER: I don't want to get into essentially
15 an oral argument on the merits here, but what the Court said
16 was what the Coast Guard did inconsistent with clearly
17 expressed Congressional intent? Clearly expressed
18 Congressional intent, that's the question here. There's no
19 need for discovery to figure out whether what the Coast Guard
20 did on August 30th is inconsistent with intent is clearly
21 expressed by Congress.

22 THE COURT: Okay. Mr. Benner, you were going to
23 say something?

24 MR. BENNER: Your Honor, Jonathan Benner. As
25 Mr. Bressler indicates, my clients are vessel owners, vessel

1 operators who are affected by either the federal rule or the
2 Commonwealth's regulations, and they've been sort of put in a
3 Ping-Pong situation here.

4 THE COURT: On November 28th, Mr. Benner, what
5 would you do if there are two regulations out there? What will
6 you do?

7 MR. BENNER: Well, this is the dilemma we've
8 sequentially faced as we go back and forth between these
9 regulations.

10 I would advise them, frankly -- I don't think it
11 violates any confidences -- that the federal rule is dominant,
12 that the federal rule prevails. We always advise clients, of
13 course. But we need clarity as to which rule is in effect.

14 Right now the state has taken the position, despite
15 the concluding paragraph of the admittedly lengthy 1st Circuit
16 opinion, that they are not going to stay enforcement of their
17 regulations.

18 So since September 1, we have been told by the
19 state that the state rules are back in effect. During the time
20 of Judge Tauro's injunction, the federal rules were in effect.
21 Prior to Judge Tauro's injunction, the state rules were in
22 effect. On November 28th, we'll have a new federal rule.

23 So it's in our interest, as parochial as it may be,
24 but I happen to think that it's fairly important, that we get
25 to this as quickly as possible.

1 THE COURT: Let me ask the gentleman in the back,
2 Mr. Cray.

3 MR. ETTINGER: Yes.

4 THE COURT: Mr. Ettinger. If you want the four
5 months, would you agree to stay the operation of your
6 regulation?

7 MR. CRAY: Your Honor, I would not have authority
8 to do that.

9 THE COURT: Then why shouldn't I move forward so
10 that Mr. Benner and his clients don't have this situation --

11 MR. CRAY: Well, the situation, your Honor -- let
12 me first make it clear, it's not a conflict situation. It's
13 not a situation where it's impossible -- though -- it's
14 impossible to comply with both. Even the 1st Circuit has made
15 that clear.

16 THE COURT: Is that right, Mr. Benner? Can you do
17 both?

18 MR. BENNER: Your Honor, the problem is that we
19 don't -- we would not concede that it's not a conflict
20 situation. If conflict analysis is what we're doing now,
21 that's the issue in play.

22 THE COURT: Yes, but you have to do one thing or
23 another -- you have to make a choice on November 28th?

24 MR. BENNER: Well, we are -- I think before we get
25 to November 28th, if we can't resolve this here and find an

1 orderly way of proceeding on the questions on remand, we'll
2 have to move for an injunction prior to that time. I mean, we
3 can't be in this situation of not knowing which rule applies at
4 a different time.

5 I think the circuit clearly contemplated that the
6 state -- and we should try to reason together to get some kind
7 of orderly environment for this, but we don't have it --

8 THE COURT: Let me ask you. Is that possible so
9 that on November 28th, when the United States regulation goes
10 in effect, Mr. Cray, is there some way that -- the parties I'll
11 call sort of middle parties, the people who are not government
12 entities, can have some clarity, at least while we try to work
13 this out?

14 MR. CRAY: First off, your Honor, unfortunately,
15 what we're dealing with here is not an agency position or a
16 state agency's position. It's an act of the Massachusetts
17 legislature. And my ability to, so to speak, negotiate
18 on behalf of the legislative body is nonexistent.

19 THE COURT: Well, somebody enforces that -- I know
20 it's an act of the state legislature, but somebody enforces it,
21 otherwise it's just an act of the legislature and nothing
22 happens.

23 So I'm asking you, for the people who enforce the
24 regulation, given that this litigation exists and we have
25 parties like Mr. Benner -- the interest that Mr. Benner

1 represents telling me, for example, that we don't know what to
2 do, and he says I'm going to do what the United States says to
3 do, which is going to make the state people unhappy, and he
4 doesn't want them unhappy either.

5 MR. CRAY: All he has to do, his folks have to do
6 to comply is just for a few more boats to take on these tug
7 escorts. It's not -- there's no physical impossibility from
8 complying with both rules. That 18 months passed from when
9 this lawsuit was initially filed and Judge Tauro's preliminary
10 injunction issued in which the industry was fully able to
11 comply with both the state and local rules, similarly now two
12 months have passed since the state rule went back into effect.

13 So I just want to make clear. This is not a
14 situation where it's physically impossible for Mr. Benner's
15 clients to be able to comply with both. All they have to do is
16 a few more ships have to take on escorts. I mean, so far in
17 this litigation itself there have been 20 months when both
18 regimes have been fully in effect and the shipping lanes have
19 not collapsed, matters have been able to proceed forward.

20 THE COURT: Mr. Benner, you have the last word on
21 this.

22 MR. BENNER: Thank you, your Honor.

23 Your Honor, I think the point is there is a logical
24 way to get through these issues more quickly rather than less
25 quickly. When I hear Mr. Cray and Mr. Ettinger talk, it seems

1 to me they're talking about an extensive period of time where,
2 given the state's position that it will not stay its hand on
3 enforcement, we are going to be subjected to the state rule.

4 It would seem to me that the United States and my
5 clients are saying that we can resolve as a matter of law two
6 of the three issues that are still before you, we should make
7 an attempt to do that. Either we will succeed or we will
8 fail. We should have a schedule here for filing motions to get
9 that decided. I suspect, given the state of play right now,
10 that we will have to seek injunctive relief, too, but I can't
11 say that for sure and I can't speak for the United States. But
12 we should get that out of the way and do that quickly as
13 possible.

14 Second point, maybe perhaps the third depending on
15 how you count, is the financial responsibility rule. It seems
16 to us that the circuit clearly was expecting the state to make
17 a showing of how it's going to implement this. I think if we
18 get these first two points out of the way, then how we deal
19 with that third issue will be much more clear.

20 Thank you, your Honor.

21 THE COURT: When do you want to file this brief,
22 Mr. Bressler?

23 MR. BRESSLER: Well, I think it depends on what
24 briefs we're talking about, but sitting here today I think that
25 we could file something in two weeks.

1 THE COURT: And what is the something you can file
2 in two weeks?

3 MR. BRESSLER: A motion for relief. I have to
4 confer more with my clients about whether we would seek an
5 injunction on November 28th or if we would just move for
6 summary judgment now. And of course, if we move for summary
7 judgment and they say they need facts to impose it, then
8 they -- there are provisions in the federal rules that allow
9 for that.

10 THE COURT: Well, I don't want to -- yes, there are
11 provisions. I don't want, of course, to be back here with
12 Rule 56(e) or 56(f), one of those, with the same arguments
13 being made that they need to find out what's happening in Puget
14 Sound.

15 I'll tell you what we'll do. I think you file your
16 motion when you file your motion, going to the parts of the
17 case you say that can be resolved as a matter of law. You file
18 it in two weeks. The opposing parties ordinarily have 14
19 days. You want more than 14 days?

20 MR. CRAY: Yes, your Honor. If -- just because I
21 have a major SJ -- Supreme Judicial Court filing --

22 THE COURT: Yes, I know the SJC.

23 MR. CRAY: I didn't want to be colloquial, your
24 Honor.

25 THE COURT: That's all right.

1 MR. CRAY: If what Mr. Bressler is saying, that
2 their motions would be in on October 29th, while directly two
3 weeks from that would be Monday, November 12 or Veteran's Day,
4 if we could have at least until Friday, the 16th if the Court
5 is trying -- the Court is trying to have a hearing before the
6 28th --

7 THE COURT: I'm not trying to have a hearing, I'm
8 just trying to get the briefing done because I have a thought
9 about how we do this brief, which is that you do your motion
10 on -- you file your papers with whatever you have on November
11 whatever it is, 16th.

12 MR. CRAY: 16th, Friday the 16th.

13 THE COURT: November 16th, and I will permit you on
14 a parallel course to do whatever discovery you think is
15 appropriate, and if it's necessary to supplement whatever
16 papers you have filed with whatever you discover with respect
17 to Puget Sound. All right?

18 Now, if you get your discovery done before I have a
19 ruling, you can file that supplement; if not, we'll go with
20 what we've got. All right? That's the best I'm going to be
21 able to do in light of where we are today. All right?

22 You understand? Have I made myself clear?

23 MR. CRAY: Certainly. So discovery would basically
24 run in the ordinary course, the briefing --

25 THE COURT: No. I'm giving you the same four

1 months for this short period because I don't know how quickly
2 I'm going to get to their motion in any event.

3 MR. CRAY: I understand.

4 THE COURT: If you've gotten papers to me because
5 you've expedited your discovery and you've got something you
6 want to tell me before I get this case decided, then you get it
7 to me, all right?

8 MR. CRAY: But otherwise, the four months would be
9 the parameter, the window --

10 THE COURT: Four months all bets are off for this
11 limited question. You follow me?

12 MR. CRAY: You mean after four months all bets are
13 off.

14 THE COURT: That's right, after four months.

15 MR. CRAY: And just one, on this -- since we are
16 going into this compressed scheduling, again, we've gotten
17 absolutely nothing in terms of initial disclosures. We're
18 certainly not asking for initial disclosures on the large body
19 issues --

20 THE COURT: Have you had a scheduling conference of
21 any kind with Judge Tauro?

22 MR. CRAY: Yes, there was, your Honor, and at that
23 stage Judge Tauro determined to move towards -- to move
24 on the motion for judgment on the pleadings track, which
25 ultimately turned out not to be the -- perhaps totally the best

1 suited. So there was a conference, there were some -- there
2 were disclosures made --

3 THE COURT: Is there a scheduling order somewhere?

4 MR. CRAY: No, because Judge Tauro determined to go
5 straight to a briefing schedule on the -- on motions for
6 judgment on the pleadings. So it went up to the 1st Circuit on
7 the basis of a judgment on the pleadings and so the schedule
8 order never issued because the idea was let's first do the
9 briefing and have the argument on the Rule 12(c) motion and
10 then see where we stand.

11 THE COURT: What are you looking for?

12 MR. CRAY: Pardon, your Honor?

13 THE COURT: What are you looking for?

14 MR. CRAY: Simply on the two limited topics that I
15 represented, we have the four months for --

16 THE COURT: Let me stop you, Mr. Cray. I have a
17 different proposal to make.

18 MR. CRAY: I'm sorry.

19 THE COURT: No, don't be sorry. I have a different
20 proposal that may be easier to manage.

21 You have a specific request to make about what
22 documents you're looking for, right?

23 MR. CRAY: Yes, on two discrete subjects, your
24 Honor, yes.

25 THE COURT: And you're looking for any statements

1 made by the Coast Guard on these two on --

2 MR. CRAY: Administrative records, other statements
3 that aren't subject to a valid claim of privilege or the like.

4 THE COURT: Can't you get those things to him,
5 Mr. Bressler, right away? Whatever you've got, even as we go
6 forward with this briefing?

7 MR. CRAY: We don't have anything in writing that
8 expresses what they want, but I think the answer is yes, we can
9 certainly work quickly and in good faith to produce what
10 they're looking for, records of rules and so on certainly
11 within four months. Probably within two months.

12 THE COURT: That's what I have in mind, that if
13 you -- as you get -- as you get papers, as you find things, you
14 turn them over to Mr. Cray and Mr. Ettinger. And you file,
15 Mr. Cray and Mr. Ettinger, file your papers on the 16th --

16 MR. CRAY: Yes, your Honor.

17 THE COURT: But as Mr. Bressler gives you some
18 documents, if there are things you want to supplement, you can
19 file supplements to that.

20 MR. CRAY: Thank you, your Honor.

21 THE COURT: But we'll start now, Mr. Bressler,
22 giving the defendants whatever papers you've got in response to
23 their discrete questions.

24 MR. BRESSLER: Well, I --

25 THE COURT: You may not have it.

1 MR. BRESSLER: I may -- it may take a little time
2 to put together, but more important, I'm not certain -- I need
3 to hear the discrete question.

4 THE COURT: He's going to write it. He's going to
5 give you a writing so you will know exactly what they're
6 looking for. If you don't have it, you don't have to give it
7 to him. Obviously you can't give it to him if you don't have
8 it, but anything that fits within those discrete questions that
9 you have you should turn over to him right away, as soon as you
10 can get it. I don't mean to say that you stop all the presses
11 and stop the office and go do nothing but that, but as soon as
12 practicable, get it to him as we go through this briefing
13 schedule.

14 What I'm trying to do is to make it possible for
15 the parties to proceed with everybody getting what they need to
16 make the case as intelligible to me as possible.

17 All right? Why don't we do it that way. Does that
18 sound all right, Mr. Cray?

19 MR. CRAY: Absolutely, your Honor.

20 THE COURT: Mr. Benner, do you agree?

21 MR. BRESSLER: Yes, your Honor. I want to be
22 clear. He's been talking about discovery on provisions one and
23 two.

24 THE COURT: I thought he was talking about one and
25 two.

1 MR. BRESSLER: Right. As far as discovery, we
2 don't intend to press forward on three.

3 THE COURT: I understood that.

4 MR. BRESSLER: And I don't want to get into
5 discovery on three.

6 THE COURT: We're not doing that right now.

7 MR. CRAY: Actually, your Honor, I'm glad
8 Mr. Bressler clarified that. That had been one of the two
9 subjects --

10 THE COURT: Why don't you defer the -- why don't
11 you defer problem three for the time being. Let's get through
12 problem one and two, issue one and two first.

13 MR. CRAY: Certainly. Could we at least not be
14 precluded from commencing it? In other words, --

15 THE COURT: You understand the priority is to
16 respond to your -- what you say is what's happening on Puget
17 Sound so you can respond to one and two, issues one and two,
18 that's really the priority I'm giving Mr. Bressler.

19 MR. CRAY: I understand, your Honor.

20 THE COURT: You can file with respect to three, but
21 what I'm asking him to do for you and for me now is to give you
22 the stuff that has to do with issues one and two.

23 MR. CRAY: So we're free to go ahead on three, but
24 it's just he'll be responding in the ordinary course.

25 THE COURT: In the ordinary course but one and two

1 is what I'm asking Mr. Bressler to do on an expedited basis.

2 MR. CRAY: We appreciate that, your Honor.

3 THE COURT: You understand, Mr. Bressler?

4 MR. BRESSLER: Yes, your Honor.

5 THE COURT: Does that work for you?

6 All right. Can we leave it at that, then? October
7 29th for your papers, November 16th from the defendants. Fair
8 enough? With your responding as quickly as you can to discrete
9 questions with respect to issues one and two.

10 MR. BRESSLER: Yes, your Honor.

11 THE COURT: Okay.

12 Mr. Benner, were you going to say something?

13 MR. BENNER: Thank you, your Honor.

14 THE COURT: Thank you.

15 (Court adjourned at 4:10 p.m.)

16 - - - - -

17 CERTIFICATION

18 I certify that the foregoing is a correct
19 transcript of the record of proceedings in the above-entitled
20 matter to the best of my skill and ability.

21

22

23 /s/ Debra M. Joyce _____

24 Debra M. Joyce, RMR, CRR Date
25 Official Court Reporter

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

THE UNITED STATES OF AMERICA,)	
)	
)	
Plaintiff,)	Civil Action No. 05-10112 RCL
)	
v.)	
)	
THE COMMONWEALTH OF)	
MASSACHUSETTS, <i>et al.</i>)	
)	
)	
Defendants.)	
)	

**PLAINTIFF'S RESPONSES AND OBJECTIONS TO DEFENDANTS' FIRST
REQUESTS FOR PRODUCTION OF DOCUMENTS**

Pursuant to Federal Rules of Civil Procedure 33 and 34, plaintiff the United States of America, by and through undersigned counsel, hereby responds as follows to Defendant the Commonwealth of Massachusetts' First Requests for the Production of Documents and First Set of Interrogatories.

GENERAL OBJECTIONS

1. Plaintiff will respond to defendants' Document Requests subject to, without intending to waive, and expressly preserving (a) any objections as to competency, relevancy, materiality, confidentiality, privilege and admissibility of any of the responses; and (b) the right to object to other discovery requests involving or relating to the subject matter of the Document Requests.

2. Plaintiff objects to the Document Requests to the extent that they seek information protected by the deliberative process privilege, the attorney-client privilege, work product doctrine, or any other applicable privilege or immunity.

Mass. Suppl. Opp. Exhibit 2
--

3. Plaintiff objects to each and every discovery request to the extent that it seeks to expand discovery beyond the administrative record concerning the U.S. Coast Guard's promulgation of the "Final Rule: Regulated Navigation Area; Buzzards Bay, MA; Navigable Waterways Within the First Coast Guard District," 72 Fed. Reg. 50052 (August 30, 2007) ("Final Rule"). Such requests are not reasonably calculated to lead to relevant evidence, as the proper basis for evaluation of a legal challenge to the Final Rule is the administrative record of the Final Rule.

4. Plaintiff objects to each and every discovery request regarding the plaintiff's Supremacy Clause challenge to the Commonwealth's tug escort rule, M.G.L. c. 21M, § 6(a) & (b), and the Commonwealth's vessel manning rule, M.G.L. c. 21M, § 4(a) & (b), on the ground that such requests are not likely to lead to relevant evidence. The United States' claims present pure questions of law that need no further factual development beyond the "Final Rule: Regulated Navigation Area; Buzzards Bay, MA; Navigable Waterways Within the First Coast Guard District," 72 Fed. Reg. 50052 (August 30, 2007), relevant statutory authority, and other matters susceptible to judicial notice.

5. Plaintiff objects to each and every discovery request relating to the Coast Guard's decisions with respect to bodies of water not at issue in this litigation. The validity of the Coast Guard's preemption determinations with respect to the waters covered by the "Final Rule: Regulated Navigation Area; Buzzards Bay, MA; Navigable Waterways Within the First Coast Guard District," 72 Fed. Reg. 50052 (August 30, 2007), is not impacted by any action the Coast Guard may or may not have taken elsewhere years or decades earlier, so any discovery relating to the such actions is irrelevant to the plaintiff's claims. Accordingly, discovery requests relating to the such other bodies of water are not reasonably calculated to lead to relevant evidence.

6. Plaintiff objects to defendants' definitions, instructions, and directions to the extent that they seek to expand the obligations imposed on plaintiff by the Federal Rules of Civil Procedure.

7. Plaintiff's investigation of this matter is continuing, and plaintiff may supplement its responses and assert additional objections to these Document Requests as appropriate.

Subject to and without waiving the foregoing objections, plaintiff responds as follows to the Commonwealth's Document Requests:

REQUESTS FOR THE PRODUCTION OF DOCUMENTS

DOCUMENT REQUEST NO. 1: All documents concerning the Coast Guard rulemaking regarding Buzzards Bay that culminated in the final rule memorialized at 72 Fed. Reg. 50,052 (Aug. 30, 2007), including all preliminary phases of that rulemaking (such as the advance notice of proposed rulemaking memorialized at 69 Fed. Reg. 62,427 (Oct. 26, 2004) and the notice of proposed rulemaking memorialized at 71 Fed. Reg. 15,649 (Mar. 29, 2006)). While this request includes any formal administrative record(s) prepared by the Coast Guard regarding this rulemaking, its scope expressly goes beyond the documents in any such administrative record, because this is not a suit brought against the Coast Guard under the Administrative Procedure Act, but instead is an affirmative litigation voluntarily brought by the United States itself, to which the ordinary documentary discovery processes of the Federal Rules of Civil Procedure apply.

OBJECTIONS: To the extent that this request seeks the production of documents covered by the work product privilege and the attorney-client privilege, plaintiff objects. Plaintiff also objects to this request on the ground that it is not reasonably calculated to lead to the discovery of relevant evidence.

RESPONSE: No documents are produced at this time. Plaintiff's investigation of this matter is continuing, and plaintiff will supplement its responses and/or assert additional objections to this Document Request as appropriate.

DOCUMENT REQUEST NO. 2: All documents concerning the Coast Guard rulemaking regarding Puget Sound that culminated in the final rule memorialized at 59 Fed. Reg. 42,962 (Aug. 19, 1994), including all preliminary phases of that rulemaking (such as the notice of proposed rulemaking memorialized at 57 Fed. Reg. 30,058 (July 7, 1992)). While this request includes any formal administrative record(s) prepared by the Coast Guard regarding this rulemaking, its scope expressly goes beyond the documents in any such administrative record, because this is not a suit brought against the Coast Guard under the Administrative Procedure Act, but instead is an affirmative litigation voluntarily brought by the United States itself, to which the ordinary documentary discovery processes of the Federal Rules of Civil Procedure apply.

OBJECTIONS: Plaintiff objects on the grounds of overbreadth and undue burden. To the extent that this request seeks the production of documents covered by the work product privilege and the attorney-client privilege, plaintiff objects. Plaintiff also objects to this request on the ground that it is not reasonably calculated to lead to the discovery of relevant evidence.

RESPONSE: No documents are produced at this time. Plaintiff's investigation of this matter is continuing, and plaintiff will supplement its responses and/or assert additional objections to this Document Request as appropriate.

DOCUMENT REQUEST NO. 3: All documents concerning the earlier Coast Guard rulemaking regarding Puget Sound that culminated in the final rule memorialized at 47 Fed. Reg. 17,968 (Apr. 26, 1982), including all preliminary phases of that rulemaking (such as the notice of

proposed rulemaking memorialized at 44 Fed. Reg. 21,974 (Apr. 12, 1979)). While this request includes any formal administrative record(s) prepared by the Coast Guard regarding this rulemaking, its scope expressly goes beyond the documents in any such administrative record, because this is not a suit brought against the Coast Guard under the Administrative Procedure Act, but instead is an affirmative litigation voluntarily brought by the United States itself, to which the ordinary documentary discovery processes of the Federal Rules of Civil Procedure apply.

OBJECTIONS: Plaintiff objects on the grounds of overbreadth and undue burden. To the extent that this request seeks the production of documents covered by the work product privilege and the attorney-client privilege, plaintiff objects. Plaintiff also objects to this request on the ground that it is not reasonably calculated to lead to the discovery of relevant evidence.

RESPONSE: No documents are produced at this time. Plaintiff's investigation of this matter is continuing, and plaintiff will supplement its responses and/or assert additional objections to this Document Request as appropriate.

DOCUMENT REQUEST NO. 4: All documents concerning California's local tug escort rule for San Francisco Bay, as codified at Cal. Code Regs. tit. 14, §§ 851-851.10.1.

OBJECTIONS: Plaintiff objects on the grounds of overbreadth and undue burden. To the extent that this request seeks the production of documents covered by the work product privilege and the attorney-client privilege, plaintiff objects. Plaintiff also objects to this request on the ground that it is not reasonably calculated to lead to the discovery of relevant evidence.

RESPONSE: No documents are produced at this time. Plaintiff's investigation of this matter is continuing, and plaintiff will supplement its responses and/or assert additional objections to this Document Request as appropriate.

DOCUMENT REQUEST NO. 5: All documents concerning California's local tug escort rule for Los Angeles/Long Beach Harbors, as codified at Cal. Code Regs. tit. 14, §§ 851.20-851.23.

OBJECTIONS: Plaintiff objects on the grounds of overbreadth and undue burden. To the extent that this request seeks the production of documents covered by the work product privilege and the attorney-client privilege, plaintiff objects. Plaintiff also objects to this request on the ground that it is not reasonably calculated to lead to the discovery of relevant evidence.

RESPONSE: No documents are produced at this time. Plaintiff's investigation of this matter is continuing, and plaintiff will supplement its responses and/or assert additional objections to this Document Request as appropriate.

DOCUMENT REQUEST NO. 6: All documents concerning California's local tug escort rule for Port Hueneme, as codified at Cal. Code Regs. tit. 14, §§ 851.50-851.54.

OBJECTIONS: Plaintiff objects on the grounds of overbreadth and undue burden. To the extent that this request seeks the production of documents covered by the work product privilege and the attorney-client privilege, plaintiff objects. Plaintiff also objects to this request on the ground that it is not reasonably calculated to lead to the discovery of relevant evidence.

RESPONSE: No documents are produced at this time. Plaintiff's investigation of this matter is continuing, and plaintiff will supplement its responses and/or assert additional objections to this Document Request as appropriate.

DOCUMENT REQUEST NO. 7: All documents concerning California's local tug escort rule for Humboldt Bay, as codified at Cal. Code Regs. tit. 14, §§ 851.80-851.86.

OBJECTIONS: Plaintiff objects on the grounds of overbreadth and undue burden. To the extent that this request seeks the production of documents covered by the work product privilege and the attorney-client privilege, plaintiff objects. Plaintiff also objects to this request on the

ground that it is not reasonably calculated to lead to the discovery of relevant evidence.

RESPONSE: No documents are produced at this time. Plaintiff's investigation of this matter is continuing, and plaintiff will supplement its responses and/or assert additional objections to this Document Request as appropriate.

DOCUMENT REQUEST NO. 8: All documents concerning California's local tug escort rule for San Diego Harbor, as codified at Cal. Code Regs. tit. 14, §§ 852-852.6.

OBJECTIONS: Plaintiff objects on the grounds of overbreadth and undue burden. To the extent that this request seeks the production of documents covered by the work product privilege and the attorney-client privilege, plaintiff objects. Plaintiff also objects to this request on the ground that it is not reasonably calculated to lead to the discovery of relevant evidence.

RESPONSE: No documents are produced at this time. Plaintiff's investigation of this matter is continuing, and plaintiff will supplement its responses and/or assert additional objections to this Document Request as appropriate.

DOCUMENT REQUEST NO. 9: All documents concerning any local tug escort rule established by any of the 50 States or any county or municipality within them, other than the local tug escort rules for Buzzards Bay, Puget Sound, and the 5 California water bodies referenced above.

OBJECTIONS: Plaintiff objects on the grounds of overbreadth and undue burden. To the extent that this request seeks the production of documents covered by the work product privilege and the attorney-client privilege, plaintiff objects. Plaintiff also objects to this request on the ground that it is not reasonably calculated to lead to the discovery of relevant evidence.

RESPONSE: No documents are produced at this time. Plaintiff's investigation of this matter is continuing, and plaintiff will supplement its responses and/or assert additional

objections to this Document Request as appropriate.

DOCUMENT REQUEST NO. 10: All documents concerning any statement or decision by the Coast Guard that it intends to preempt any state, county, or municipal law under Title I, other than the Massachusetts laws at issue in this litigation.

OBJECTIONS: Plaintiff objects on the grounds of overbreadth and undue burden. To the extent that this request seeks the production of documents covered by the work product privilege and the attorney-client privilege, plaintiff objects. Plaintiff also objects to this request on the ground that it is not reasonably calculated to lead to the discovery of relevant evidence.

RESPONSE: Subject to these objections and the general objections, see the following documents, as identified by their Document Controls Numbers as listed on the attached Discovery Document Index: D13-02; 312-03; D13-05; D13-06; D13-08; D13-09; D13-10; D13-11; D13-13; D13-15; D13-18; D13-19; D13-20.

DOCUMENT REQUEST NO. 11: All documents concerning any statement or decision by the Coast Guard not to preempt a state, country, or municipal law under Title I, other than its statements regarding the local tug escort rule for Puget Sound that appear at 44 Fed. Reg. at 21,978; 47 Fed. Reg. at 17,971; 57 Fed. Reg. at 30,064; and 59 Fed. Reg. at 42,968.

OBJECTIONS: Plaintiff objects on the grounds of overbreadth and undue burden. To the extent that this request seeks the production of documents covered by the work product privilege and the attorney-client privilege, plaintiff objects. Plaintiff also objects to this request on the ground that it is not reasonably calculated to lead to the discovery of relevant evidence.

RESPONSE: Subject to these objections and the general objections, see the following documents, as identified by their Document Controls Numbers as listed on the attached Discovery Document Index: D13-04; D13-14.

DATED this 30th day of November, 2007.

Respectfully Submitted,

PETER D. KEISLER
Assistant Attorney General

MICHAEL SULLIVAN
United States Attorney
MARK T. QUINLIVAN
Assistant United States Attorney

/s/ Steven Y. Bressler
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Attorneys for the United States of America



US et al v. Massachusetts et al
(Civil Action No. 05-10112-RCL)

USCG DISCOVERY PRODUCTION

DOCUMENT INDEX

DISCOVERY DOCUMENT INDEX

[illegible]

District 5, 7, 8, 9, 14 & 17

DOCUMENT CONTROL #	FR CAT	PAGES	DATE	AUTHOR(S) / CONTENT
FR-D5-0				No Responsive Documents Located
FR-D7-0				No Responsive Documents Located
FR-D8-0				No Responsive Documents Located
FR-D9-0				No Responsive Documents Located
FR-D14-0				No Responsive Documents Located
FR-D17-0				No Responsive Documents Located

District 11

DOCUMENT CONTROL #	FR CAT	PAGES	DATE	AUTHOR(S) / CONTENT
FR-D11-0				Privileged Documents Only

District 13

DOCUMENT CONTROL #	FR CAT	PAGES	DATE	AUTHOR(S) / CONTENT
FR-D13-02	10	2	04/09/07	Ltr to Senator Rick Metsger fm RADM Baumgartner concerning pre-empt regs
FR-D13-03	10	2	04/09/07	Ltr to Senator Floyd Prozanski fm RADM Baumgartner concerning pre-empt regs
FR-D13-04	11	12	Not Dtd	MOA Between WA & USCG
FR-D13-05	10	1	02/14/07	Email frm LCDR Niles concerning PFDs on Passenger VsIs
FR-D13-06	10	1	11/13/06	Ltr to WA DOE fm RADM Houck concerning new Vsl Trans Regs
FR-D13-07	N/A	7	10/16/06	Scott Knutson re: WDOE Compliance Schedule w/ 2 atchmts
FR-D13-08	10	8	09/27/06	Susanne McLemore re: Oil Transfer Rules w/2 atchmts
FR-D13-09	10	4	09/26/26	Susanne McLemore re: Oil Transfer Rules w/ 1 atch
FR-D13-10	10	4	09/22/06	CDR Kane re: PA Guidance for WA Oil Transport Rules
FR-D13-11	10	2	08/04/06	WDOE & CG D13 MOA

District 13 (cont.)

DOCUMENT CONTROL #	FR CAT	PAGES	DATE	AUTHOR(S) / CONTENT
FR-D13-13	10	1	07/26/06	Scott Knutson re: Court Decision on WA Oil Transport Rules
FR-D13-14	11	20	07/21/06	CAPT Odell re: WA Oil Transfer Regs w/ 2 atchmts
FR-D13-15	10	1	07/21/06	CAPT Odell re: WA Oil Transport Rules
FR-D13-18	10	106	03/31/06	Draft Vsl Oil Trans, Cont Plan, Fac Oil Trans, Specific Reg Changes & Cont Plan Chages
FR-D13-19	10	2	03/16/06	Ltr to WA Oil Transfer Ad Cmt w/ 1 atchmt
FR-D13-20	10	2	04/11/05	Jason Reichert re: Oil Transfer Rule

CG- 0943 (G-LRA) (under construction)

DOCUMENT CONTROL #	FR CAT	PAGES	DATE	AUTHOR(S) / CONTENT
FR-LRA-XX				



U.S. Department of Justice
Civil Division, Federal Programs Branch

Via U.S. Mail: P.O. Box 883, Rm. 7111 Washington, DC 20044
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December 18, 2007

Via Federal Express

Pierce O. Cray
Assistant Attorney General
One Ashburton Place
Boston, MA 02108

Re: United States v. Commonwealth of Massachusetts et al., Civ. No. 05-10112-RCL
(D. Mass.)

Dear Mr. Cray:

We stated in our formal response of November 30, 2007, that we would supplement our response to Document Request No. 1 as appropriate. Please find enclosed a disc including documents responsive to that request.

Sincerely,

Scott Risner

Enclosures

cc: C. Jonathan Benner
Troutman Sanders LLP
Suite 1000
401 9th Street, N.W.
Washington, DC 20004

Jonathan M. Ettinger
Foley Hoag LLP
155 Seaport Boulevard
Boston, MA 02210-2600

**Mass. Suppl. Opp.
Exhibit 3**



US et al v. Massachusetts et al
(Civil Action No. 05-10112-RCL)

USCG DISCOVERY PRODUCTION

Docket CGD01-04-133

DOCUMENT INDEX

DISCOVERY DOCUMENT INDEX

Docket CGD01-04-133				
Buzzards Bay, MA Regulated Navigation Area				
DOCUMENT CONTROL #	RFP#	PAGES	DATE	AUTHOR(S)
FR-133-001	01	4	26OCT04	Adv Notice of Proposed Rulemaking, Fed Reg/Vol 69. No. 206
FR-133-002	01	2	09SEP03	MA Congress Buzzards Bay ltr to ADM Crea
FR-133-003	01	20	31OCT03	ADM Crea's response to MA Congress concerning Buzzards Bay
FR-133-004	01	33	9-10 SEP03	Ports and Waterways Safety Assessment Workshop Report
FR-133-005	01	02	4NOV04	Ltr from MA Senator O'Leary
FR-133-006	01	02	16NOV04	Ltr from Rep Koczera
FR-133-007	01	01	15NOV04	Ltr from Rep Quinn
FR-133-008	01	01	15NOV04	Statement from Rep Bernie Frank concerning CG's opposition to MA law w/respect to vsl transits through BB
FR-133-009	01	03	Not Dtd	Statement at BB ANPRM public hearing from Boyd Hollingsworth, VP of Legislative Affairs for American Waterways Operators (AWO)
FR-133-010	01	01	Not dtd	Statement at BB ANPRM public Hearing by Ronald Scott, Chief, Mattapoissett Fire Dept
FR-133-011	01	02	14NOV04	Statement at BB ANPRM Public Hearing by Dr Christopher Reddy of the Woods Hole Oceanographic Institution
FR-133-012	01	03	Not Dtd	Statement fm Norm Bourque, GM for a Marine Equip Co in Boston, MA
FR-133-013	01	02	24MAY04	Ltr fm Dave Paquin rep Deepwater Port Service, Fairhaven, MA
FR-133-014	01	01	15NOV04	Email fm Richard Perry
FR-133-015	01	02	11NOV04	Ltr fm Brendan McGillvray of SeaBoats, Inc.

Docket CGD01-04-133 (cont.)

Buzzards Bay, MA Regulated Navigation Area

DOCUMENT CONTROL #	RFP#	PAGES	DATE	AUTHOR(S)
FR -133-016	01	09	16NOV04	Roster 16NOV04 CG Buzz Bay ANPRM Public Hearing
FR-133-017	01	05	17NOV04	Roster 17NOV04 CG Buzz Bay ANPRM Public Hearing
FR-133-018	01	01	Not Dtd	Statement fm Thomas L. Bushy
FR-133-019	01	01	16NOV04	Statement fm William Griffin, Town of Bourne, MA Town Administrator
FR-133-020	01	01	17NOV04	Statement fm Michael Moore, Woods Hole Oceanographic Institute, Woods Hole, MA
FR-133-021	01	03	17NOV04	Statement fm Dragos Rauta, Technical Director, INTERTANKO
FR-133-022	01	01	17NOV04	Statement fm Captain John Gibbons, MA Deputy Pilot Commissioner, D3
FR-133-023	01	01	01NOV04	Ltr fm MA Senator O'Leary to Capt Mary Landry, CO, MSO Providence
FR-133-024	01	02	01DEC04	Email statement from Steven Bernhard, Master ITB JAVA SEA
FR-133-025	01	03	30NOV04	Ltr fm Pieter G. Kuypers to Mr. E. LeBlanc (MSO Providence)
FR-133-026	01	04	04DEC04	Petition signed by Bourne, MA residents
FR-133-027	01	01	08DEC04	Email ltr fm Peter Codd, Captain of the ITB JAVA SEA
FR-133-028	01	01	11DEC04	Email ltr fm Shawn Richter
FR-133-029	01	03	Not Dtd	Email ltr fm Martin W. Golden, Master, Tug JILL REINAUER
FR-133-030	01	08	23DEC04	Fax & Cert mail ltr from Gov Mitt Romney to Mr. E. LeBlanc, MSO Providence
FR-133-031	01	02	Not Dtd	Statement fm F. X. Donovan, Cape Cod Canal Mgr
FR-133-032	01	03	Not Dtd	Ltr from Fred Loomis, Boston Coastwise Pilots
FR-133-033	01	13	Not Dtd	Ltr from Captain John X. Kauffman, Fed, State & Coastwise Pilot
FR-133-034	01	21	23DEC04	Comments fm The Coalition for Buzzards Bay

Docket CGD01-04-133 (cont.)

Buzzards Bay, MA Regulated Navigation Area

DOCUMENT CONTROL #	RFP#	PAGES	DATE	AUTHOR(S)
FR-133-035	01	14	23DEC04	Statements fm 10 municipalities surrounding Buzzards Bay
FR-133-036	01	02	17DEC07	Ltr fm Senator Edward Kennedy
FR-133-037	01	02	23DEC04	Comment fm Jean Cameron, Exec Cord, Pac States/BC Oil Spl Tsk Force
FR-133-038	01	03	27DEC04	Statement fm AWO
FR-133-039	01	07	10DEC04	Comments fm Fredric C. Danhauser
FR-133-040	01	04	27DEC04	Comments fm Christopher Hardy, Dir of Leg Affairs, MA Audubon Society
FR-133-041	01	02	23DEC04	Ltr fm Rep William Greene, Jr
FR-133-042	01	08	26DEC04	Comments fm Capt G. V. Brooks, Principal, Towing Solutions
FR-133-043	01	12	21DEC04	Comments fm Capt Alan L. Bish, Port Captain, Reinauer Transportation Co.
FR-133-044	01	01	Not Dtd	Comments fm Capt E. Howard McVay, Jr., President, Northeast Marine Pilots
FR-133-045	01	02	Not Dtd	Ltr fm Paul M. Fini, Jr, Tug QUENAMES
FR-133-046	01	01	12JAN05	Comments of Attorney Gen Thomas Reilly
FR-133-047	01	08	29MAR06	Notice of Proposed Rulemaking CGD01-04-133
FR-133-048	01	120	15NOV99	USCG Regulatory Assessment: Use of Tugs to Protect Against Oil Spills in the Puget Sound Area
FR-133-049	01	16	MAR06	USCG Buzzards Bay Regulatory Eval March06
FR-133-050	01	02	25MAY06	Ltr fm Douglas C. O'Donovan, Tech Service Mgr, Marine Spill Response Corp
FR-133-051	01	02	03JUN06	Ltr fm George B. Auchy, former Mgr of Distrigas LNG Terminal, Everett, MA
FR-133-052	01	02	06JUN06	Ltr fm Rep Eric T. Turkington to Capt Roy Nash, SEC CDR, SEC SENE
FR-133-053	01	01	20JUN06	Email fm Cliff Hopkins fo the Tug MATTHEW TIBBETTS

Docket CGD01-04-133 (cont.)

Buzzards Bay, MA Regulated Navigation Area

DOCUMENT CONTROL #	RFP#	PAGES	DATE	AUTHOR(S)
FR-133-054	01	01	21JUN06	Ltr fm Captain S. Luke Catarius
FR-133-055	01	02	24JUN06	Ltr fm Steven Bernhard, Master, ATB LINCOLN SEA
FR-133-056	01	01	26JUN06	Email fm Mark Holzman, retired Relief Master fm Mobil Oil Fleet & current Chief Mate w/ Reinauer Trans Co
FR-133-057	01	01	Not Dtd	Ltr fm Capt Carol Jones, Boston Street Marine Services
FR-133-058	01	03	15MAY06	Email ltr from Fred Loomis, Boston Coastwise Pilots
FR-133-059	01	01	26JUN06	Comments fm Eric Schreiber, Mate, Tug MATTHEW TIBBETTS
FR-133-060	01	03	Not Dtd	Ltr fm Authur J. Volkle, Jr, Director, Legal Affairs, Maritrans
FR-133-061	01	02	27JUN06	Ltr fm Douglas F. Siple, Master, Oceans Towing Vessels
FR-133-062	01	05	27JUN06	Comments fm Paul G. Kirchner, American Pilots Asso, Inc.
FR-133-063	01	03	22JUN06	Email Ltr fm Christopher A. Coakley, AWO
FR-133-064	01	09	27JUN06	Comments fm The Coalition for Buzzards Bay
FR-133-065	01	03	28JUN06	Comments fm Timothy S. Bishop, Mater, ATB MEREDITH C. REINAUER, Reinauer Trans. Co.
FR-133-066	01	03	15JUN06	Ltr fm Capt John X. Kauffman; Fed, State & Boston Coastwise Pilot
FR-133-067	01	02	26JUL06	Ltr fm MA Congressional Delegates to USCG Commandant Thad Allen
FR-133-068	01	02	28AUG06	Ltr to Rep Barney Frank from USCG Commandant
FR-133-069	01	02	28AUG06	Ltr to Rep William Delahunt from USCG Commandant
FR-133-070	01	02	28AUG06	Ltr to Rep James McGovern from USCGCommandant
FR-133-071	01	01	14SEP06	Ltr fm MA Congressional Delegates to Commandant Thad Alllen

Docket CGD01-04-133 (cont.)
Buzzards Bay, MA Regulated Navigation Area

DOCUMENT CONTROL #	RFP#	PAGES	DATE	AUTHOR(S)
FR-133-072	01	05	03APR07	USCG Categorical Exclusion APR 2007
FR-133-073	01	16	May07	USCG Regulatory Eval May 2007
FR- 133-074	01	08	30AUG07	Buzzards Bay Final Rule Fed Reg